

STATE OF MICHIGAN  
COURT OF APPEALS

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HARRY RONALD FRANS, d/b/a RAINBOW'S  
END,

Plaintiff/Counterdefendant-  
Appellee,

v

HARLEYSVILLE LAKE STATES INSURANCE  
COMPANY,

Defendant/Counterplaintiff-  
Appellant.

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FOR PUBLICATION  
March 7, 2006  
9:05 a.m.

No. 255091  
Schoolcraft Circuit Court  
LC No. 03-003376-GK

ON RECONSIDERATION

Official Reported Version

Before: Murphy, P.J., and Sawyer and Meter, JJ.

METER, J. (*concurring*).

I agree with the majority's disposition on reconsideration. I note that this case involves a close question. However, *Jacobs v Schmidt*, 231 Mich 200; 203 NW 845 (1925), which was not discussed by the parties in their original briefs or arguments but was relied on by defendant in its motion for reconsideration, tips the balance in favor of our disposition today. The appraisal clause in the *Jacobs* stock sale agreement was very similar to the clause at issue here. *Id.* at 202-203. The *Jacobs* Court concluded that the appraisal clause could not be unilaterally revoked by plaintiff, given the difference between an arbitration and an appraisal. *Id.* at 204. In light of *Jacobs*, I believe that our current disposition is correct.

/s/ Patrick M. Meter